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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

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# No. 346

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MATSON NAVIGATION COMPANY, THE OCEANIC STEAMSHIP COMPANY, AND MATSON TERMINALS, INC.,

*Appellants,*

*vs.*

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA ET AL.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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## STATEMENT AS TO JURISDICTION.

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MAURICE E. HARRISON,
HOWARD J. FINN,
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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1935**

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# No. 346

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MATSON NAVIGATION COMPANY, A CORPORATION, THE OCEANIC STEAMSHIP COMPANY, A CORPORATION, AND MATSON TERMINALS, INC., A CORPORATION,
*Appellants,*

*vs.*

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, JOHN C. CORBETT, FRED E. STEWART, R. E. COLLINS, H. G. CATTELL AND RAY L. RILEY, THE MEMBERS OF SAID STATE BOARD OF EQUALIZATION, AND CHARLES J. McCOLGAN, FRANCHISE TAX COMMISSIONER OF THE STATE OF CALIFORNIA.

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## STATEMENT AS TO JURISDICTION ON APPEAL.

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MAY IT PLEASE THE COURT:

The appellants, in support of the jurisdiction of this Court to review the above-entitled cause on appeal, respectfully show:

### I. Statutory Provisions Sustaining Jurisdiction.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stats. 936, 937 (United States Code, Title 28, Sec. 344),

provides that Section 237 of the Judicial Code is amended to read in part as follows:

> "* * * A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The Act of January 31, 1928, Chapter 14, 45 Stats. 54, as amended by the Act of April 26, 1928, Chapter 440, 45 Stats. 466 (United States Code, Title 28, Sections 861a and 861b), provides:

> "BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.
>
> "Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

## II. Date of Decree and Date of Application for Appeal.

The judgment sought to be reviewed was rendered on the 27th day of March, 1935. A petition for rehearing of said cause by the Supreme Court of the State of California was duly filed on the 16th day of April, 1935, and an order denying such petition was rendered on the 25th day of April, 1935. The application for appeal was presented on the 17th day of June, 1935.

## III. Statute of the State of California, the Validity of Which is Involved.

Said cause involves the validity of the Bank & Corporation Franchise Tax Act of the State of California (California Statutes 1929, page 19, as amended by California Statutes 1929, page 1555).

With certain exceptions the Act (Sec. 4) imposes upon every financial, mercantile, manufacturing and business corporation doing business within the State, for the privilege of exercising its corporate franchises therein, a tax measured by its net income at the rate of 4% of such net income for the next preceding fiscal or calendar year.

"Doing business" is defined (Section 5) as meaning any transaction or transactions in the course of its business by a corporation created under the laws of this state or by a foreign corporation qualified to do or doing intrastate business in this state.

In Section 10, the Act provides that if the entire business of a corporation is done within the State the tax shall be measured by its entire net income; and if the entire business of the corporation is not done within the State, the tax shall be measured by that portion thereof which is derived from business done within the State. It further provides that the portion of the net income of a corporation derived

from business done within the State shall be determined by an allocation upon the basis of sales, purchases, expenses of manufacture, payroll, value and situs of tangible property or by reference to these or other factors or by such other method of allocation as is fairly calculated to assign to the State the portion of net income reasonably attributable to business done within the State. The Supreme Court of the State of California in the decision from which this appeal was taken, interpreted the Act to impose a tax upon every corporation carrying on intrastate business and to include within the measure of that tax income derived from interstate and foreign business.

Other provisions of the Act provide for the determination of the taxpayer's annual accounting period (Section 12) the manner and form of reporting income (Section 13), and the filing of consolidated returns by affiliated companies. The Act provides for examination of the taxpayer's return by the Commissioner and the determination therefrom of the correct amount of the tax. Provision is made for filing of a written protest by the taxpayer against the determination of the Franchise Tax Commissioner and for hearing thereon.

An appeal from the action of the Franchise Tax Commissioner by the taxpayer to the State Board of Equalization is provided for (Section 25).

Section 30, as amended, (Calif. Statutes 1933, page 703) gives to the taxpayer the right to apply to the Supreme Court of the State of California for a writ of review from the decision or order of the State Board of Equalization and empowers the Supreme Court of the State of California to enter judgment either affirming or setting aside the order or decision of the Board.

## IV. Nature of the Case.

The appellants, The Oceanic Steamship Company and Matson Navigation Company, are corporations formed under the laws of the State of California. They are engaged in certain intrastate business activities. In addition to its intrastate business Matson Navigation Company engages in the steamship business, transporting passengers and freight exclusively in interstate commerce between California and Hawaii. The Oceanic Steamship Company conducts a similar business, transporting passengers and freight solely in interstate and foreign commerce. Neither of these corporations engages in any intrastate transportation activities.

Appellants, by a consolidated return, reported to the Franchise Tax Commissioner all of their net income from intrastate activities for the taxable year ending December 30, 1930, and paid the tax computed thereon. In computing the tax, appellants omitted all net income from their transportation business, which was wholly foreign and interstate in character. The Franchise Tax Commissioner assessed an additional tax of $19,637.71 upon appellants. This amount was fixed by applying the statutory rate (4%) to a portion of the net income of the taxpayers derived from their interstate and foreign transportation business.

The appellants protested the additional tax and after the Franchise Tax Commissioner had ruled adversely upon that protest, an appeal was duly taken to the State Board of Equalization.

The State Board of Equalization affirmed the order of the Franchise Tax Commissioner and the appellants made application to the Supreme Court of the State of California for a writ of review. The Supreme Court of the State of California reviewed the decision of the State Board of

Equalization and entered its judgment affirming the decision of the Board. A petition for rehearing by the Supreme Court of the State of California was denied.

The plaintiffs contended before the Franchise Tax Commissioner, before the State Board of Equalization, and before the Supreme Court of the State of California, (a) that the act, properly construed, did not include net income from interstate or foreign business in the measure of the tax which it imposed; and (b) that the act, if construed to include in the measure of the tax any income of appellants from their interstate and foreign business, violated the Constitution of the United States, in that it denied to appellants the equal protection of the laws, deprived appellants of their property without due process of law and without just or any compensation and burdened interstate and foreign commerce. The Supreme Court of the State of California, upon rendering its judgment against the Appellants, held that the Act imposes a tax upon each corporation engaging in intrastate business, and that the tax so imposed is measured in part by net income from its interstate and foreign business. The Supreme Court of the State of California further held by said judgment that the Act, so construed, is not repugnant to the Constitution of the United States.

Said judgment of the Supreme Court of the State of California is a final judgment in said cause in the highest court of the State of California in which a decision in said cause could be had. In said cause the validity of the Bank and Corporation Franchise Tax Act of the State of California was disputed on the ground that it was repugnant to the Constitution of the United States and the decision of the Supreme Court of the State of California upheld the validity of said Act.

## V. Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

*Kansas City Southern R. Co.* v. *Road Improvement District No.* 3, 266 U. S. 379, 385, 386;
*Saltonstall* v. *Saltonstall*, 276 U. S. 260;
*Pacific Co., Ltd.*, v. *Johnson*, 285 U. S. 480;
*Miedreich* v. *Lauenstein*, 232 U. S. 236.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of the statutory provisions hereinbefore specified.

Respectfully submitted,

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